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Volume 4, Number 1,  
March 1983

Published by The Ontario Human  
Rights Commission



## White drivers only

The dispatcher of a radio-operated taxi system functions like an employment agency by bringing together employers (customers who order cabs) and available workers (taxi drivers). When a customer calls requesting a "white only" driver and the dispatcher complies, the *Human Rights Code* is breached.

While such practices are not very frequent, they do occur, though usually non-white drivers do not know why they are passed over by the dispatcher. And even if the driver is aware of discrimination, his or her dependence on the dispatcher is such that no action is taken.

A reporter in an Ontario city tested the situation by calling various taxi companies and asking for white drivers. When the survey disclosed that the dispatchers generally complied with the discriminatory requests,



Congress Photo

the Ontario Human Rights Commission initiated a series of complaints under section 53 of the Code.

As a result, the complaints were settled and the following procedures were agreed to by the companies: Dispatchers are instructed to refuse all orders that are discriminatory and to advise their customers that no service will be provided if they insist on their illegal conditions. Cab drivers are advised of this policy.

The company declares that it will abide by the principles of the Code.

The commission, in agreeing to settle on these terms, will monitor compliance by instituting spot checks.

### No job for a woman?



Miller Service

Ability, not sex-role stereotyping should be the key to success for any executive.

Ms. F. complained that the large company for which she was working would not consider her for an executive position because she was a woman and, therefore, could not supervise a group of salesmen. Though there were no witnesses to the conversations between Ms. F. and the manager, who allegedly had made a series of discriminatory statements, other witnesses described him as 'chauvinistic and having difficulty in relating to women.'

Following investigation, which supported the complaint, the company paid the complainant \$10,000 in compensation for lost earnings and insult to her dignity, and provided the commission with assurance of its non-discriminatory policies.

### Anti-Semitism - again?

by Catherine Wilbraham

Plainclothed police officers blend unobtrusively with worshippers as they walk nervously up the path to the synagogue's doors, recently defaced by scurrilous and obscene graffiti. Police eyes search for concealed weapons and members of the congregation open their purses or prayer shawl bags before they pass into the Sanctuary.

Last week, the service was delayed because of a bomb threat; and today, beneath the domed ceiling, the air is quiet, but not peaceful. The congregants wait, tense, but respectful, for the rabbi to speak the opening words.

What kind of a picture is being described? Is it a retrospection of Jewish life in Europe during the early and middle years of this century? No. It is, to our shame, a sketch of Jewish life in Toronto during the last Holy Day period.

It was only 40 years ago that the destructive force of racism was manifested in its ultimate form in the Holocaust. The rest of the world, which averted its eyes and stopped its ears while the brutal drama was unfolding, recoiled in horror when, finally and unequivocally, it was brought face to face with the terrible, inhuman, story. It wept with com-

passion as it read the private diary of a 14-year-old schoolgirl from Amsterdam. It vowed, by all that it held honourable, that such a profa-

nity would never ever happen again. Therefore, to guard against racial and other forms of discrimination, the

*continued on page 4*



Miller Service

# Unit for the Handicapped



Miller Services

by Barbara Justason

In June 1981, a woman in a wheelchair was refused service by the owners of a Toronto restaurant. She complained to the Ontario Human Rights Commission, and after an informal attempt to assist her, the commission was unable to effect a change in the restaurant management's decision to deny service to people in wheelchairs. Countless examples of such blatant discrimination have been reported over the years, and many more have gone unreported.

In June 1982, the Unit for the Handicapped was established by the Ontario Human Rights Commission to administer legislation pertaining to the protection of the handicapped. This new legislation is the result of a major effort by the commission to address the urgent needs in human rights in Ontario. The new Human Rights Code became law on June 15, 1982. It provides protection from discrimination because of handicap. Handicap is defined to include real or perceived physical handicap, mental retardation or impairment, learning disability or a mental disorder. Protected areas include services; goods and facilities; accommodation, including harassment in accommodation; contracts; employment, including harassment in employment; and vocational associations.

Where denial of equal opportunity is obviously due only to lack of physical access or amenities, there is no contravention of the Code. However, the commission is empowered to attempt settlement of such matters, and boards of inquiry are empowered to make orders respecting access or amenities for the handicapped where discrimination has been determined, provided the cost of doing so is not too great. If a board, for example, finds that a theatre owner has discriminated by refusing service to a

handicapped person, it may order the modification of the seating arrangements to accommodate people in wheelchairs. Conversely, no infringement has occurred if a theatre located in the lower level of a large building complex cannot accommodate people in wheelchairs because of its inaccessibility.

Legislation for the handicapped is administered and enforced across the province through the commission's regional offices. The Unit for the Handicapped, under the management of Ms. Sita Ramanujam, is responsible for giving expert guidance on all compliance matters, research and educational activities relating to this new ground. Its specialist staff also handle complaints that involve particularly complex issues. For example, a complainant with 50 per cent vision in his right eye applied for an assembler's job with a large automobile company. He was given a standard interview and sent for a medical. Based on the medical report, the company refused to hire him. The complainant alleges he can do the job and has, in fact, done similar work in the past without any difficulty.

In a case such as this, the investigating officer, in addition to performing the ordinary investigative procedure, will need to conduct a physical demands analysis to determine the essential duties of the job, and enlist a qualified person to make a functional capacity assessment on the complainant to determine his ability to perform those essential duties. Based on these results, the officer may have to request that certain modifications, within reason, be made to accommodate the complainant.

The legislation provides for reasonable accommodation in employment as it applies to essential duties. To treat a handicapped person and a non-handicapped person equally

may have a discriminatory effect. 'Essential' means 'necessary and indispensable' and is determined through an examination of the job in the context of the entire company structure and function. Essential duties are usually defined as being 70 to 80 per cent of the job content. In handling complaints, the officers must determine what adaptations can be made to the job, to the workplace and to such terms and conditions of employment as hours of work and length of training, that will enable the handicapped person to work effectively.

As of November 1982, the commission received a total of 59 complaints on the grounds of handicap: 40 in the area of employment; 16 in services, goods and facilities; two in accommodation and one under contracts. Complaints involved cover a wide spectrum of handicap, ranging from visual impairments, epilepsy, eczema, cerebral palsy, diabetes, back problems, muscle disorders, arthritis, burn scars, paraplegia, mental disorders, leukemia, emotional problems and hearing impairments.

In addition to compliance matters, the unit provides administrative directions to programs designed to eliminate discrimination because of handicap in the following ways:

- Developing strategies to eliminate both physical and psychological barriers to equal opportunity in all areas protected by the Code.
- Advising employers, landlords and business persons about effective, low-cost methods of providing access and amenities for the physically handicapped.
- Establishing liaison with client and community organizations and agencies such as the Epilepsy Association, Clarke Institute of Psychiatry, March of Dimes, Metro Association for the Mentally Retarded, Canadian National Institute of the Blind, Blind Organization of Ontario with Self-help Tactics (BOOST), etc., for information exchange and awareness development.
- Assisting employers to comply with the provisions of the Code by amending their pre-employment screening measures such as advertising, application forms, pre-medicals, essential requirements, etc.
- Advising employers about recruitment strategies that will apprise handicapped individuals and their representative organizations of employment opportunities.
- Assisting employers and rehabilitation agencies in the development methods of testing handicapped persons for their ability to perform the essential duties of the job. (It is important to develop methods to enable an objective measurement of job-related skills and aptitudes. At the same time, such methods must be cost-effective and receive the policy support of employers and unions).
- Developing and maintaining ongoing liaison between community and advocacy organizations, public and private agencies and employers to increase awareness of the provisions of the Code and of the dynamics and consequences of discrimination and prejudice

against the handicapped, and to share ideas and information related to the client group.

- Developing media and public educational strategies to sensitize and educate the community throughout the province about the legislation and its application. This would include giving speeches and conducting awareness seminars and workshops wherever requested and required.
- Developing a resource library on all handicap related issues.

Many people with a handicap have suffered a long history of discrimination and exclusion from the mainstream of society. The more widely known the commission's legislation becomes throughout the province, the greater the number of people there will be to test its applicability in seeking protection against discrimination. The Unit for the Handicapped, with the co-operation of all citizens of Ontario, hopes to contribute to the increase in equal opportunity wherever it applies for the benefit of everyone.

Barbara Justason is a human rights officer with the commission's Unit for the Handicapped.

## A rapid case settlement

The complainant responded to a *Help Wanted* sign in the respondent's window. The sign indicated that the position was for a part-time day and night stock clerk. She approached the person she believed to be responsible for hiring, who refused her application, saying, 'Stock clerk, as in boy.'

The respondent was sent the complaint as well as a questionnaire in accordance with Rapid Case procedures. The respondent subsequently informed the officer by telephone that the company accepted full responsibility and was prepared to settle.

Following discussions between the human rights officer, the complainant and respondent, the proposals agreed upon were that the respondent

1. send the complainant a letter of apology;
2. send the commission a letter of assurance;
3. offer part-time employment to the complainant;
4. give the complainant a total of \$100 in gift certificates for a department store, as a gesture of goodwill; and
5. initiate human rights education of staff.



Stockroom worker doing her job.

Affirmation/Published quarterly by:  
The Ontario Human Rights Commission

Editorial Office  
c/o Ontario Human Rights Commission,  
Queen's Park,  
Toronto, Ontario M7A 1A2

ISSN 0228-5800

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## Editorials

### Discrimination in the media

There is a general understanding that the media are not only reporting the news, but making it was well. This is particularly true in conflict situations, where the selective eye or ear of the reporter frequently gives the reportage a highly personal slant.

But when it comes to reporting on minority groups, an additional element is involved. The Hon. James Fleming, a minister in the federal cabinet and himself a former journalist, says that the selection process penalizes minority groups, especially non-whites, because only their deviant behaviour is considered newsworthy. Non-white activities are rarely considered majority concerns until they become (or are perceived as becoming) a threat.

One of the reasons for this imbalance is the absence of non-whites in most Canadian newsrooms. 'Few white reporters (Fleming says) seek out positive feature stories in non-white communities, not because they are insensitive, but because they don't know their way around these communities.' The result is 'a built-in exclusion of minority perspectives.'

The media cannot tell readers what to think, but they do determine what readers will think about. Sensitive reporting will strengthen the fabric of our society, while insensitive or unknowledgeable reporting tends to weaken its structure.

### Who's afraid of affirmative action?

For many employers, school boards and universities, the term affirmative action conjures up a host of problems well-known from a number of celebrated court cases in the United States. However, the proponents of affirmative action stress that it is necessary in order to right historic wrongs and systematic inequalities in our society. It gives people a chance in the workplace which otherwise they would not have. But, of course, it does *not* mean that employers are supposed to hire unqualified people.

Opponents claim that under whatever name, affirmative action is discrimination in reverse. They point to a decision in 1979 of the United States Supreme Court, which ruled that Kaiser Aluminum had been unjustified in giving preference to black employees for entrance to Kaiser's on-the-job training program. Kaiser could have justified its policy as affirmative action *only if it had discriminated* in the past, but because the company denied such previous discrimination, the Court denied it the right of affirmative action.

The new *Human Rights Code*, in section 28(h), provides that one of the functions of the commission is 'to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination.' In exercising this function, would the commission encourage citizens to engage in 'reverse discrimination'? Clearly not in the meaning and intent of the law. The Hon. Russell H. Ramsay, Ontario's Minister of Labour, in addressing a conference on affirmative action in school boards, had no hesitation in saying, 'my message to employers is that they have the opportunity to undertake affirmative action because it is a rational business practice rather than a government requirement.'

In theory, most people would like the disadvantaged in our society to get a fair break. There is no need to be afraid of doing what is right, what morality demands and the law encourages.

### A remarkable settlement

The complainant, Mr. A., was, for many years, the fire chief of his city. When he reached the age of 60, he was given a one-year extension in his terms of employment, and then a second extension of which the first six months were definite and the last six months were to be treated on a month-to-month basis at the discretion of the city's chief administrative officer. Prior to the end of the second extension, Mr. A. was officially retired. He was 61 years old at that time and he lodged a complaint that he had been discriminated against on the

basis of his age. He claimed that he was fully capable of doing his job.

The respondent, after some initial delay, agreed that the claim was justified. The main point of the settlement was a buy-back of six years of previously non-pensionable service; the result of this was to give the complainant an additional pension income of about \$2,200.00 annually for the rest of his life. He also received an immediate cheque of nearly \$10,000.00 to represent equivalent salary and interest for the three

## Chairman's corner



Canon Purcell (left) talking with Human Rights Officer Joe Polley of the commission's Kingston Office.

It seems quite incredible that an entire year has passed since I was appointed chairman of the Ontario Human Rights Commission.

It has been a most gratifying year — charged with challenge, excitement, hard work and, above all, tremendous learning opportunities. I believe it is appropriate, at this stage, to reflect upon the accomplishments of the last twelve months.

We face tremendous challenges in the 1980s in light of rapid technological change, a more complex society, economic difficulties and constraints and a greater demand for rights. The goal of our commission is to conduct public education programs in order to prevent conflicts and to conciliate complaints of discrimination through discussion and mutually satisfactory settlements.

The proclamation of our new *Human Rights Code* on June 15, 1982 was the highlight of this past year. The extended grounds and broadened mandate of protection for the people of Ontario placed us, once again, in the forefront of human rights legislation, and will enable us to respond more effectively to the changing needs of changing communities.

The commission has taken the opportunity presented by this new legislation to initiate consultations with senior officials of major institutions and corporations with a view to advising them on the requirements of the new Code and to assist in the development of policy and preventive programs.

Closer liaison with organizations and citizens' groups committed to the advancement of human rights principles enabled the commission to hold and co-sponsor large-scale conferences throughout the province in an attempt to heighten awareness of, and sensitivity towards, human rights in our society.

Two new regional commission offices opened — one in Scarborough, which

covers the geographic area east of Yonge Street to Trenton and north to Huntsville, and one in Mississauga, which covers west of Yonge Street to Oakville and as far north as Owen Sound. Their jurisdictions allow them to serve their regions more fully and efficiently than the single central office, which previously covered these areas, was able to do.

During the past year we have been fortunate in being able to participate in the Cabinet Committee on Native Affairs and also in the Cabinet Committee on Race Relations, which recently published an official government of Ontario policy statement on race relations and a task force report on The Portrayal of Racial Diversity in Government Advertising and Communications. We praise the action taken by the government on these issues and hope it will serve as an inspiration to similar community, industrial and institutional endeavours.

This fall, the commission launched a systematic program of education within the schools throughout Ontario. The response has been overwhelming and seminars presented in the schools by our officers have been extremely well received.

My personal commitment on beginning my term of office was to make the public more aware of the commission, its work and its aspirations. To this end, I travelled around the province meeting and talking with various community leaders, concerned individuals and groups. The gratifying and heart-warming response and co-operation of the communities that I visited have left me more convinced than ever that the commission relies on, and cannot achieve its goals without, the support and goodwill of the people of Ontario.

The overriding aim of our *Human Rights Code* is to create, at the community level, a climate of understanding and mutual respect in which all people are equal in dignity and rights, in which each is a part of the whole Canadian community and in which each has a rich contribution to make to the development and well-being of our society.

Our commission must work harder than ever to educate the public regarding human rights, to promote the values of dignity and worth of each individual and to enforce the law when discrimination occurs.

This has been a dynamic year for the commission — dynamic in its true sense: of a force in actual operation; active, potent, energetic. It has been an exhilarating one for me and I look forward to working with all of you in the future as we strive towards making our mutual ideals and goals a living reality.

# Is Intent Necessary?

by Thea Herman

When anti-discrimination legislation was first enacted, its primary purpose was to remedy the blatant forms of discrimination that existed in Ontario society at that time. To a large extent, the legislation has been successful and many of the more obvious signs of discrimination have disappeared.

But it soon became clear that their disappearance did not herald the onset of an 'equal society', a society in which everyone has an equal opportunity to participate. Rather, certain barriers persist, in indirect forms of discrimination, which are just as effective in denying equal access as were previous blatant acts. This notion has been referred to as 'systematic discrimination'.

The idea first received legal acceptability in the United States' case of *Griggs v Duke Power*, in which the court found that a test that job applicants had to write had the effect of excluding a disproportionate number of black applicants. The notion was advanced that if a neutral requirement (e.g. a test) had the effect of excluding members of a particular group, it was discriminatory. Thus, it was the discriminatory effect, not the discriminatory intent, which was the principal concern.

This principle has been adopted by several boards of inquiry in Ontario. Height and weight requirements, which had the effect of excluding most women from becoming police officers, but which were not shown to be necessary, were found to be in contravention of the *Ontario Human Rights Code*. Likewise, a requirement that employees wear uniform caps was found to have the effect of excluding male Sikhs, whose religion requires them to wear a turban.

It appears that the principle expounded in these cases has been reversed by the recent decision of the Ontario Court of Appeal in *O'Malley v. Simpsons-Sears*. In that case, Mrs. O'Malley, an employee of Simpsons-Sears, was unable to work on Saturdays because of her religion. As a result, her employment was terminated. The board of inquiry, following previous board decisions, agreed that the Saturday requirement had the effect of excluding Mrs.

O'Malley on the basis of her religion. It was the position of the Ontario Human Rights Commission that the law then put the onus on Simpsons-Sears to establish that it had been unable to accommodate Mrs. O'Malley's religious practice.

The chairman of the board of inquiry disagreed with the commission's position, and stated that it was up to the commission to prove that Simpsons-Sears had acted unreasonably in failing to accommodate Mrs. O'Malley. The Commission and Mrs. O'Malley appealed the decision, and both the Ontario Divisional Court and the Court of Appeal held that there was contravention of the Code because there had been no intent by Simpsons-Sears to discriminate against Mrs. O'Malley because of her religion. Therefore, the Ontario Court of Appeal has stated that the *Ontario Human Rights Code* is directed at discriminatory intent, not discriminatory effect, as had been previously believed.

The new *Human Rights Code*, 1981 (which was proclaimed as law on June 15, 1982) provides, in section 10, that a requirement or policy that has the effect of excluding members of a particular group is a contravention of the Code unless the requirement or policy is 'reasonable and bona fide'.

It is likely, therefore, that the decision in *O'Malley* will only affect those cases in Ontario in which there has been an alleged contravention of the previous Code. That is, it would apply only to acts which occurred before June 15, 1982. However, the decision continues to be a matter of considerable interest in other provinces because most of their Human Rights Acts do not have specific provisions such as section 10, and a decision of the Ontario Court of Appeal is usually afforded considerable deference in the courts and tribunals of other provinces.

In view of the importance of the *O'Malley* case, the Ontario Human Rights Commission sought leave to appeal the decision to the Supreme Court of Canada, which was granted.

Thea Herman is the commission's legal counsel.

# 'An arbitration of note — must everyone 'hang blood'?

A nurse, Mrs. N. Wilson, was working at the Peterborough Civic Hospital, and in the execution of her duties was required to 'hang blood'. This term describes the process by which a blood transfusion is initiated. It consists of opening the blood bag, placing the transfusion into the bag, closing the saline solution valve, starting the bloodflow by opening the valve, and hooking the bag on the transfusion stand. Mrs. Wilson, who has substantial nursing experience and had worked on the surgical floor for three years, became a member of Jehovah's Witnesses and, as a result of her religious studies, she came to the conclusion that it would be contrary to the teachings of the Bible to continue to perform all the functions hitherto required of her in giving patients a blood transfusion. She felt especially incapable of continuing to open the blood valve, which would start the flow of blood into the patient's veins.

In an arbitration procedure chaired by S.R. Ellis, it was admitted by both parties (the hospital and the Ontario Nurses' Association representing Mrs. Wilson) that any intent to discriminate against Mrs. Wilson on religious grounds was absent. It was contended, however, that the hospital's failure to accommodate Mrs. Wilson in the small matter of actually initiating the bloodflow into a patient's veins (which could easily be done in a matter of seconds by another nurse) had the effect of discriminating against her. The principle at stake was this: Was the hospital entitled to state

that all nurses must, when required, 'hang blood' — even though this rule (which, in itself, was not issued for discriminatory purposes) involved the exclusion of certain nurses who could not fully perform these duties for religious reasons? By a majority vote, the arbitration board decided in favour of the nurse. The decision provided that the nurse be transferred to an area of the hospital other than the Intensive Care Unit or the Emergency Unit. The chairman of the arbitration board asserted that the rule that all nurses be able to hang blood was reasonably necessary for the operation of the ICU and Emergency, but not for other areas of the hospital. Therefore, the hospital should not have dismissed Mrs. Wilson, but reassigned her.

This principle is now embodied in section 10 of the new *Human Rights Code*, which makes exceptions only for those cases where the requirements are reasonable and bona fide. For instance, if it was understood that the circumstances require the nurse to perform all functions by herself or himself (there being no other nurses on duty), it would be reasonable to require the nurse to 'hang blood'. But where other nurses are easily available, such a requirement would not be considered reasonable.

The decision by the board of arbitration is particularly interesting because both the majority and the dissenting opinions are presented as closely reasoned arguments.



## Anti-Semitism — again? Continued from page 1

Universal Declaration of Human Rights was proclaimed in 1948, human rights commissions were created and laws were passed. 'We were,' we told ourselves, 'now safe from the ugly repetition of racism.'

But the roots of anti-Semitism were not totally destroyed. Within the last 15 months, new growth has begun to push more aggressively to the surface to influence the thoughts and actions of people who, for whatever reasons, cannot think independently and logically. Small gangs desecrate Jewish cemeteries; they scrawl anti-Semitic filth on walls; they physically assault members of the Jewish community on our streets; they threaten apartment managers who have Jewish tenants; they terrorize Jewish homeowners; they read, write, import and disseminate what is euphemisti-

cally called 'hate literature'; there are even some who are propagating the myth that the Holocaust did not take place, who deny the persecutions, the oppression and the abuse that culminated in the attempted obliteration of an entire race.

What is particularly frightening about this phenomenon is that the repudiation might be accepted by those who, against their own knowledge, don't want to believe that such unspeakable things not only happened, but were ordered by law. The danger of accepting one deceit lies in the comparative ease with which others are accepted. George Santayana once wrote, 'Those who forget history are doomed to repeat it.' One has only to overhear conversations on buses and subway trains and to read the 'Letters to the Editor'

columns in the newspapers across the country to realize that people now feel freer to express their anti-Semitic feelings openly. Hardly empirical evidence, but frightening, just the same.

It has been argued that much of the most recent articulation of anti-Semitism was generated by events in Lebanon. How the citizens of one country can be accused of being responsible for activities in another country is beyond the scope of rational analysis. Canadian Christians may, by applying the same spurious logic, be accused of the murders perpetrated by Lebanese Christians in Sabra and Shatila.

It is a fact that while anti-Semitic incidents have increased during the past nine to 15 months, the federal anti-

hate laws, which have been in existence for 12 years, have secured only one conviction, and it was ultimately overturned on appeal. It is difficult to understand how people who think of themselves as unprejudiced and just, can stand by passively and watch the malignant progress of this societal disease.

Government, community leaders and our leaders in the established churches must all take action to combat this, and any form of racism.

It is past time for them to speak loudly in open condemnation of anti-Semitism.

It is past time for us all to act.

Catherine Wilbraham is publications editor for the Ontario Ministry of Labour.